

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

MARCH 2, 2004

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID A. ZAIDAIN	Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL MITTEN	Chairperson
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary, BZA
BEVERLEY BAILEY,	Zoning Specialist

D.C. OFFICE OF CORPORATION COUNSEL:

SHERRY GLAZER, Esq.
LORI MONROE, Esq.

C-O-N-T-E-N-T-S

AGENDA ITEM

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REQUEST FOR CLARIFICATION OF MODIFICATION OF ORDER TO APPLICATION NO. 16852-A OF WASHINGTON PSYCHOANALYTIC SOCIETY/ST. PATRICK'S PROTESTANT EPISCOPAL CHURCH5
REMAND FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS: BZA APPEAL APPLICATION NOS. 15129 AND 15136 - WOODLAND-NORMANSTONE NEIGHBORHOOD ASSOCIATION AND ADVISORY NEIGHBORHOOD COMMISSION 3C, RESPECTIVELY - ADOPTION OF PROPOSED ORDER AS FINAL ORDER	9
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P-R-O-C-E-E-D-I-N-G-S

9:49 a.m.

CHAIRPERSON GRIFFIS: Good morning ladies and gentlemen. Let me call to order the second of March 2004 public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis, Chairperson. With me today is on this opening session will be Mr. Etherly, representing the Zoning Commission is Ms. Mitten, and representing the National Capital Planning Commission is Mr. Zaidain.

Copies of today's agenda are available to you. There are going to be some adjustments and some timing issues that I will make everyone aware of very quickly.

First of all, let me just say that we are being broadcast live, which many of you may well be aware of at this point as have been here before. We are broadcast live on the Office of Zoning's website.

Also, all proceedings before the Zoning Board of Adjust are recorded and they are being made into a transcript by the recorder, who is sitting to my right.

I would ask that everyone please turn off all their cell phones and beepers at this time so that

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1 we don't have any disruption of the proceedings.

2 In terms of schedule -- sir, if you want
3 to address me, you can just come up and have a seat
4 please and I'll call on you in a moment. Oh, he can't
5 hear me? How about that? It must be my cold medicine
6 then. I'm starting to mumble. Are you picking me up?
7 Okay, very well, I will try and speak up.

8 Pardon me? Okay, be that as it may, I
9 have told you all to turn off your cell phones and
10 beepers.

11 And we're going to run right into our
12 public meeting. Of course the public meeting is the
13 time that we do deliberate on cases and there is no
14 additional testimony.

15 In terms of the schedule this morning, we
16 have -- we have Application 16852-B, which is St.
17 Patrick's request. And we're going to take that up
18 first.

19 The Board is then going to go into
20 Executive Session in order to continue preparing.
21 We've been here for several hours already in order to
22 get ready for the rest of the decisions this morning.
23 So we will follow pretty much in order the agenda with
24 the addition of that brief additional break.

25 Let me also note that there was initially

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1 on the schedule a case for possible discussion by the
2 Board and that was regarding the NCRC. That has been
3 moved by the Board to the 9th of March 2004 in a
4 special public meeting. Our schedule is not going to
5 accommodate dealing with that this morning.

6 That being said then, let's call -- unless
7 there are any preliminary matters that people are
8 aware of that they can bring to our attention, I think
9 we can proceed with the first issue on our agenda and
10 we can call the case.

11 MR. MOY: Yes, Mr. Chairman, good morning
12 members of the Board.

13 That case is Request for Clarification or
14 Modification of Order to Application No. 16852 of
15 Washington Psychoanalytic Society/St. Patrick's
16 Protestant Episcopal Church, pursuant to 11 DCMR
17 3104.1 for a special exception to allow a private
18 school under section 206 for a maximum of sixty
19 students, grades seven through nine, and a maximum of
20 12 faculty and staff in the R-1-B District at premises
21 4925 MacArthur Boulevard, N.W. (Square 1393, Lot 823).

22 On December 3, 2002, the Board deliberated
23 and decided the application. I'll only add that the
24 Board has received this request for clarification or
25 modification and leave it at that, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Thank you very much.
2 Initial discussion from the Board? Comments?

3 In reviewing this file, it seems to be a
4 very limited and narrow scope but I do believe it may
5 well rise, based on perhaps some of the questions we
6 have from the Board to a modification. And I think it
7 may be appropriate for a brief discussion at this time
8 to find this is a modification and set this for a very
9 limited public hearing.

10 I'll hear discussion on that.

11 MS. MITTEN: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes?

13 MS. MITTEN: I think that the request
14 that's being made is under 3129, which has a couple of
15 requirements.

16 One is that the request for the
17 modification of plans would be filed within six months
18 of the final date of the final order. That's 3129.3.

19 And that the approval of the request or
20 that the modification would be limited to minor
21 modifications that do not change the material facts
22 that the Board relied upon in approving the
23 application.

24 I think we have a couple of reasons that
25 would indicate why this is not a minor modification as

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1 anticipated by 3129. And I would support your
2 suggestion that we have a narrow hearing on the
3 requested modification.

4 CHAIRPERSON GRIFFIS: Very well. Can I
5 take that as a motion then?

6 MS. MITTEN: You may.

7 CHAIRPERSON GRIFFIS: Excellent. Is it
8 seconded?

9 MEMBER ETHERLY: Seconded, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Thank you, Mr.
11 Etherly.

12 CHAIRPERSON GRIFFIS: The motion is before
13 us to set this for a hearing or modification on
14 limited scope. I would embellish some of the
15 substance -- or in terms of my discussion, obviously
16 this is going to be limited and very strictly limited
17 to the change in the plans. And that is a tentative
18 music room. And any sort of accessory areas that are
19 attendant to the music room.

20 Is that everyone's understanding? I
21 believe that we do -- I know that we do have the plans
22 in the file and that will be the focus of the brief
23 discussion that we'll have on this.

24 MS. MITTEN: Mr. Chairman --

25 CHAIRPERSON GRIFFIS: Yes?

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1 MS. MITTEN: -- maybe just to be a little
2 -- a little -- a tiny bit more expansive is just to
3 say that the hearing will be on the revisions to the
4 basement plan as --

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. MITTEN: -- as submitted by the
7 applicant and represented by Drawing No. A1.0.

8 CHAIRPERSON GRIFFIS: Good. And obviously
9 the Board is going to be looking to those revisions on
10 how they might impact adversely the neighbors or the
11 zone plan and map.

12 That being said, anything in addition?
13 Everyone's in the understanding?

14 Very well then, I ask for all those in
15 support of the motion to signify by saying aye.

16 (Chorus of ayes.)

17 CHAIRPERSON GRIFFIS: And opposed?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Abstaining?

20 (No response.)

21 MR. MOY: Staff would record the vote as
22 4-0-1 on the motion of Ms. Mitten, second by Mr.
23 Etherly. One Board member not participating. Four in
24 favor of the motion, Ms. Mitten, Mr. Etherly, Mr.
25 Griffis, the Chair, and Mr. Zaidain.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much. And I think we will set this for the
3 morning of the 18th of May '04.

4 Anything else attendant to that
5 application Mr. Moy?

6 MR. MOY: No, sir.

7 CHAIRPERSON GRIFFIS: Very well. We're
8 going to take a brief recess for executive session and
9 we should be back -- I would anticipate no later than
10 10:30.

11 (Whereupon, the foregoing
12 matter went off the record at
13 9:57 a.m. and went back on the
14 record at 10:39 a.m.)

15 CHAIRPERSON GRIFFIS: Very well, let's
16 resume. I appreciate everyone's patience in affording
17 the Board additional time for its executive session.
18 But I'd like jump back to the agenda this morning.

19 Mr. Moy, if you wouldn't mind calling the
20 next case for our decision-making this morning.

21 MR. MOY: Yes, sir, Mr. Chairman. The
22 next case is -- can you hear me -- does that help?
23 No?

24 PARTICIPANT: Sorry, it's not helping.

25 MR. MOY: All right. I'll try and yell

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1 which is difficult for me.

2 This is the remand from the District of
3 Columbia Court of Appeals, BZA Appeal Application Nos.
4 15129 and 15136 of Woodland-Normanstone Neighborhood
5 Association and Advisory Neighborhood Commission 3C,
6 respectively. This is the proposed order for
7 exceptions.

8 If you'll recall on February 3, 2004, the
9 Board continued its decision to March 2, 2004 and this
10 would -- this was done to allow additional time for
11 review of the letter of exceptions received from
12 Robins, Kaplan, Miller & Ciresi on behalf of Phil
13 Mendelson. And that is in your case folders
14 identified as Exhibit 52.

15 And I think I'll -- that completes the
16 staff briefing, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Very well, thank you
18 very much, Mr. Moy. And I will just advise the Board
19 that we will speak up as we're having a little bit of
20 technical difficulties in the microphones on the Board
21 today. But hopefully people will be able to
22 understand us and hear our deliberation.

23 Let's jump right into Normanstone. We
24 did, in fact, as Mr. Moy has laid out, receive a
25 filing with exceptions and notes by the representative

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1 of Mr. Mendelson. I think we can get into this under
2 a motion, which would be appropriate.

3 But let me just lay out, first of all,
4 there -- it seems to me the remand of which we were
5 all very aware and familiar, having gone through this
6 now for some time on this particular Board, was very
7 narrow in scope in terms of what was remanded back to
8 us.

9 I believe that we did, in fact, look
10 substantially at the two major parts of the remand,
11 basically going to timeliness issue and also the
12 merits of each of the issues.

13 With that, let me just open up to others
14 if they have preliminary comments or motions for
15 actions at this time.

16 Ms. Miller?

17 VICE CHAIRPERSON MILLER: Mr. Chairman,
18 I'd like to make a motion that we issue a final order
19 on remand with explanation as to why we are rejecting
20 the exceptions. And I would like to propose that we
21 reject the exceptions for the following reasons.

22 When I read the written exceptions, my
23 general impression from it is that Mr. Mendelson is
24 asserting that we missed the point, that the appeal
25 based on timeliness was that the buildings were not

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1 constructed in accordance with approved plans from
2 which the permits issued, and that the appeal was from
3 the stop-work order.

4 However, when I go back to the Court of
5 Appeals decision, it's clear in that that the appeal
6 is not from that or at least the remand is not from
7 that. The Court specifically said that the Board
8 failed to make findings on the issue of whether the
9 April 1989 permits had the effect of modifying the
10 initial permits.

11 CHAIRPERSON GRIFFIS: Let me interrupt you
12 just briefly. You have a motion. Why don't we get a
13 second? And then you can start your deliberative
14 process on it. Is there a second to the motion? I
15 would second the motion. Why don't you proceed, Ms.
16 Miller?

17 VICE CHAIRPERSON MILLER: So the basis for
18 the exceptions, as I read it, is that the Board missed
19 the point and was dealing with the wrong appeal or
20 remand.

21 And, in fact, when one looks at the Court
22 of Appeals decision, that's not correct, that the
23 Court of Appeals remanded the case to us to look at it
24 in the context of how the revised permits had the
25 effect of modifying the initial permits with respect

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1 to the issue of timeliness. And, therefore, I would
2 propose rejecting the proposed exceptions.

3 CHAIRPERSON GRIFFIS: Very well, thank you
4 very much, Ms. Miller. I think you did bring up an
5 interesting point and that is the issues that should
6 have been argued below and may well have been.

7 And the point, as I indicated and now you
8 are also, the issues that were raised or a substantial
9 amount of issues that were raised were not part of the
10 remand. Attendant to that, you said the stop-work
11 order. Also attendant to that is the Commission of
12 Fine Arts and whether it was reviewed and what was the
13 appropriateness of that.

14 I would tend -- I'd absolutely support the
15 motion in this fashion and for the reasons stated.

16 Do others have additional comments,
17 deliberation on the motion?

18 (No response.)

19 CHAIRPERSON GRIFFIS: I think it is very
20 interesting all the issues that were brought up. And
21 I know for a fact that the Board took a fourth or
22 fifth look at this entire piece for undue caution on
23 whether we may have been misled or not seeing the
24 entirety of what we needed. I have great confidence
25 in the fact we are looking at specifically what was

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1 remanded and, therefore, are precluded from going into
2 a lot of the issues that were raised.

3 So if there is no other further
4 deliberation on this, the is motion before and has
5 been seconded. And I'd ask for all those in favor
6 signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRPERSON GRIFFIS: And opposed?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Abstaining?

11 (No response.)

12 CHAIRPERSON GRIFFIS: Very well.

13 MR. MOY: Staff would record the vote as
14 5-0-0 on the motion of Ms. Miller, second by Mr.
15 Griffis, the Chair, to issue the final order and
16 reject the letter of exceptions. Also supporting the
17 motion Mr. Etherly, Mr. Zaidain, and Mr. Parsons.

18 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.
19 And also I do need to make a note. Mr. Parsons, a
20 very good morning, is representing the Zoning
21 Commission with us for several cases in this morning's
22 decision.

23 Let's go to the next case then.

24 MR. MOY: The next case is Appeal
25 Application No. 17054 of Henry P. Sailer, et. al,

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1 pursuant to 11 DCMR 3100 and 3101 from the
2 administrative decision of the zoning administrator in
3 the issuance of Building Permit No. B448548 to Brian
4 Logan dated January 29, 2003 for the construction of
5 a single-family -- of a new single-family detached
6 dwelling.

7 The appellant alleges that the zoning
8 administrator erred by issuing the building permit
9 without applying the applicable provision, subsection
10 1567 lot occupancy and ground coverage restrictions,
11 subsection 1568, tree removal restrictions, et cetera,
12 of the Chain Bridge/University Terrace Overlay.

13 The CBUT/R-1-A zone subject premise is
14 located at 3101 Chain Bridge Road, N.W., Square 1427,
15 Lot 870.

16 On February 3, 2004, the Board completed
17 its public testimony on the appeal and scheduled its
18 decision on March 2, 2004.

19 The Board requested the following post-
20 hearing submissions. The first from the appellee
21 DCRA, the definition of the term pervious and how it's
22 applied. That was submitted and is in your case
23 folders under Exhibit 51.

24 From the intervener, the property owner,
25 represented by John Epting of Shaw Pittman submitting

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1 the written oral testimony of Armando Lourenco that
2 was presented on February 3, 2004. That's in your
3 case folders under Exhibit 48.

4 Parties' response to Edgar Nunley's
5 written declaration was provided by the appellants.
6 This was -- this response was submitted by the
7 intervener, John Epting of Shaw Pittman. And that's
8 in your case folders under Exhibit 49.

9 We have in your case folders a response to
10 the submissions from the appellants Mr. Steven Wolf,
11 and that's in your case folders identified as Exhibit
12 52.

13 And finally we have proposed findings of
14 fact and conclusions of law from both the intervener
15 and the appellants. And that's in your case folders
16 identified as Exhibit 54 and 53, respectively.

17 And that completes the staff briefing, Mr.
18 Chairman.

19 CHAIRPERSON GRIFFIS: Thank you very much,
20 Mr. Moy.

21 As Mr. Moy has laid out, we have limited
22 scope of the appeal on this and I think we ought to
23 get right into it and open up the deliberation at this
24 point. It seems to -- well, it obviously breaks down
25 into two larger areas. One that is the pool permit.

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1 I think we could bring that up first. It might be the
2 best way to start our deliberation.

3 And then the second would be that items
4 attendant to the revised permit which was issued, I
5 believe, on 13 June 2003.

6 Let's open up discussion on the issues
7 regarding the pool permit. Obviously it goes to
8 whether it -- the proposed construction was going to
9 encroach upon the rear yard. The discussion went to
10 whether the catchment tank on this type of pool would
11 be an unallowable structure within a yard.

12 It seems to me looking at, first of all,
13 the submitted plans that indicate a grade for that
14 structure. Also in terms of the testimony of Mr.
15 Lourenco who had looked at the plans, that that
16 appended tank, I really don't know what to call it,
17 but that portion of it was not above four feet and,
18 therefore, from the grade.

19 And therefore would not or rather would be
20 an allowable -- would be allowable to be within the
21 rear yard. But I'm -- I'd like to open it up for
22 others in discussion at this time.

23 VICE CHAIRPERSON MILLER: Mr. Chairman, I
24 would just like to add that I don't -- I believe that
25 Mr. Lourenco's testimony was uncontested, that the

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1 pool does not intrude into the rear yard in violation
2 of 2503.2.

3 CHAIRPERSON GRIFFIS: Okay. Is there
4 further discussion or elaboration on that?

5 Mr. Zaidain?

6 MEMBER ZAIDAIN: I'm trying -- I did want
7 to make a point -- I mean --

8 CHAIRPERSON GRIFFIS: -- and Mr. Parsons
9 has something.

10 PARTICIPANT: Go ahead.

11 MEMBER ZAIDAIN: No, I was just going to
12 suggest that, you know, we have to rely on the plans
13 that were submitted for the permit. And as they were
14 revised and narrowed down in our original proceedings.

15 And there was some concern in deliberating
16 on that issue that came into my mind regarding that --
17 the -- regarding the catch basin, I guess, we can call
18 it.

19 And that came from the photograph that we
20 saw. It was clear that -- and it almost looks like a
21 retaining wall. It was hard for me to understand
22 exactly what that pool was going to be constructed --
23 or how it's going to be constructed.

24 But we can't rely on the photograph. I
25 mean, those are, you know, during construction

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1 photographs. There's no measurements. They're not to
2 scale. So we have to rely on the plans that were
3 submitted. And in that regard, it does appear that it
4 is less than four feet and not encroaching into the
5 side yard.

6 CHAIRPERSON GRIFFIS: Well said.
7 Additional?

8 (No response.)

9 CHAIRPERSON GRIFFIS: Not seeing any
10 additional comments, of course we can keep that open
11 if need be.

12 Let's move on then to the revised permits.
13 And that -- the issues attendant to that.

14 First of all, it seems to me it really
15 boils down into one major issue. And that is looking
16 at the required parking space and then how a required
17 parking space is dealt with on the site. What is
18 attendant to those -- attendant in the regulations for
19 required parking, that being dimension of the parking
20 space. Also in terms of the driveway and the
21 treatment of the driveway.

22 And the second issue that we are obviously
23 involved in in this and attendant to that is providing
24 a garage. And that garage must be able to provide for
25 parking.

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1 It seems to me that our deliberations may
2 well break out into what in the regulations strictly
3 define how you treat that space that is within the
4 structure as opposed to that space which is required
5 under Chapter 2100 or the parking tabulation.

6 And so I gladly open up the discussion to
7 everybody. I think this will be very fruitful. It
8 seems to me that it is clear and probably would be
9 uncontested, although please raise the disagreement of
10 the Board, that a required parking space must come
11 into compliance with all the regulations. And that
12 does go to the dimensional space of the parking space
13 itself, the driveway, and the surfacing of a driveway
14 to that.

15 What is not, I think, definitive is
16 whether additional spaces that are provided are
17 actually required to come under all the regulations
18 for the required parking spaces, meaning, and perhaps
19 an analogy that I've thought useful is if one was to
20 provide a single parking space, and one is required,
21 additional areas to park would not have to come under
22 the dimensional requirements for a required parking
23 spot.

24 But could, in fact, be of differing sizes
25 or could be of compact size but not have five compact

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1 in a row.

2 That being said, I'll open it up for
3 further discussion and deliberation.

4 Mr. Parsons?

5 MR. PARSONS: Mr. Chairman, before we dive
6 into the specific regulations of required/non-
7 required, pervious/impervious, we certainly have to be
8 cognizant of the fact that this is a tree and slope
9 overlay, which has pretty specific purposes to, you
10 know, to preserve the topography and the steeper
11 topography and the trees, to prevent adverse impact to
12 the adjacent parklands, to limit the permitted ground
13 coverage so as to result in any new or expanded
14 buildings to be compatible with the community.

15 And that's the context which we have to
16 have this conversation, I think. So the situation
17 here, obviously, is that this particular project is
18 potentially exceeding the amount of pervious surface
19 through the size of the structure, its pool, its
20 driveway, its accessory garage, and so forth.

21 So as a way to try to get around that
22 fifth requirement for 50 percent coverage, this, to
23 me, novel interpretation of all involved, that a
24 driveway doesn't have to be impervious. It can be
25 pervious. And the regulations simply don't have any

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1 provisions for that.

2 As a matter of fact, the regulations say
3 that impervious surfaces include the driveways. And
4 this, to me, is a driveway, a driveway to -- they can
5 call it a pervious drive court and not make it as --
6 define it or describe it as something that's going to
7 be driven upon but certainly a driveway is required --
8 not under the regulations but access to the garage
9 necessarily needs a driveway.

10 Driveway isn't defined in our regulations
11 but Webster says it's a private road giving access
12 from a public thoroughfare to a building or buildings
13 on abutting ground. They use the term private road
14 but it makes no difference. To me, it's very simple.

15 This -- I'll use that term again, pervious
16 drive court should be an impervious drive court and I
17 can't get beyond that in our regulations to see that
18 there's any movement to allow us to interpret that
19 differently.

20 CHAIRPERSON GRIFFIS: Very well, let me
21 address that.

22 First of all, what you start off saying is
23 the premise of a driveway is required to all parking
24 spaces. I --

25 MR. PARSONS: No, I didn't say that. I

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1 said our regulations don't provide for a --

2 CHAIRPERSON GRIFFIS: I see.

3 MR. PARSONS: -- driveway to a garage.

4 But certainly there has to be access to a garage.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. PARSONS: It's just common sense.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. PARSONS: So I'm talking -- I'm not
9 talking about required parking spaces. I'm talking
10 about if you're going to call it a garage you got to
11 get to it.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. PARSONS: And if you got to get to it,
14 you've got to build a driveway and a driveway, to me,
15 is a pervious surface and we shouldn't be interpreting
16 these regulations, especially in an overlay, to allow
17 avoidance of the 50 percent lot coverage by saying,
18 "Oh, I'm going to build pervious driveways all over
19 the place or pervious surfaces," to get a terraced
20 environment into your landscape by calling it
21 pervious.

22 So that's my issue is the 50 percent limit
23 is being avoided here. By inserting new
24 interpretation of the regulations that we're going
25 start making pervious surfaces so as to avoid the

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1 requirement but we're still grading, walling,
2 retaining, and making horizontal surfaces that are not
3 within the spirit of the regulations to protect trees,
4 to protect topography, et cetera.

5 CHAIRPERSON GRIFFIS: So if I understand,
6 an additional piece that you're bring up, your
7 understanding of what a pervious surface is with a
8 tree and slope overlay is a much more of a natural
9 type landscaping?

10 MR. PARSONS: Exactly, thank you.

11 CHAIRPERSON GRIFFIS: I see.

12 MEMBER ZAIDAIN: Mr. Chair?

13 CHAIRPERSON GRIFFIS: Yes?

14 MEMBER ZAIDAIN: I'd like to chime in
15 because Mr. Parsons actually kind of went right to the
16 heart of what my issue is with this appeal and where
17 I was coming out in my deliberations.

18 To me there's two different things we're
19 struggling with here. One is the parking and whether
20 or not what is in this garage is considered required
21 parking and therefore has to be treated as such under
22 2100. And then there's the issue of the driveway.

23 I'm very clear about the parking. I think
24 2100 makes a clear delineation between parking that's
25 just -- if you're going to provide parking on your

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1 lot, that's fine and then required parking that is you
2 have to have one space, it has to be nine by nineteen,
3 which I think is the dimensional requirements, has to
4 be accessible, et cetera, et cetera.

5 And it was clear from the testimony that
6 we heard that what's going on in the garage is not
7 required parking. So -- and we can deliberate more on
8 that, which I'm sure we will.

9 But I think Mr. Parsons brings up the
10 issue with the driveway, which is something that I
11 struggled with. And it seems to me that the actual
12 regulations for driveway, and I'd like to hear some
13 more discussion on this from the Board if I'm
14 incorrect, is pretty clear.

15 And that comes under 2117.10 which talks
16 about all open parking spaces, including access
17 aisles, driveways, et cetera, et cetera, that have to
18 form an all-weather impervious surface that are at
19 least four inches in thickness except -- and to me
20 that's one of the few regulations in 2100 that does
21 not connect to required parking spaces. It merely
22 just says driveways.

23 So to me I was unclear why this driveway
24 leading to this parking -- this garage -- or this
25 additional structure doesn't have to meet 2117.10. I

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1 was, you know, trying to look through my notes and
2 then read through the submissions on how that does not
3 apply. But it seems to me that it does.

4 And why this issue of the four inch in
5 thickness and the all-weather impervious surface would
6 not apply to that driveway. It seems like that it
7 should unless there's something I'm missing in the
8 regs. But 2100 seems to be pretty clear.

9 MEMBER ETHERLY: So if I understand you
10 correctly, Mr. Zaidain, are you suggesting that
11 2117.10 would argue in favor of the drive court --

12 MEMBER ZAIDAIN: Well, I don't know what
13 a drive court is. I mean let's call it what it is.
14 It's a driveway.

15 MEMBER ETHERLY: Well, I'm not ready to go
16 there yet. But I'm mean just -- are you saying
17 2117.10 would suggest that that driveway should be
18 paved?

19 MEMBER ZAIDAIN: Yes, exactly.

20 MEMBER ETHERLY: Okay.

21 MEMBER ZAIDAIN: That's the way I read it.

22 CHAIRPERSON GRIFFIS: 2117.10 starts with
23 -- well, let's step back. First of all, you need to
24 go to -- it's going to be the interpretations -- I
25 lost my --

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1 PARTICIPANT: 2118.9?

2 CHAIRPERSON GRIFFIS: -- 2118.9 -- right
3 -- rules of interpretation where it indicates where we
4 look at all or --

5 MEMBER ZAIDAIN: Yes, and that's connected
6 to parking spaces. But that's not what's here. It's
7 just driveways period.

8 CHAIRPERSON GRIFFIS: But it isn't,
9 2117.10 says, "all open parking spaces," how do you
10 view that?

11 MEMBER ZAIDAIN: That is all open parking
12 spaces. That says all open parking spaces have to be
13 paved in accordance with that provision. But this
14 isn't an open parking space. It's a --

15 CHAIRPERSON GRIFFIS: Well, wouldn't that
16 be -- well isn't that attendant to that of which is
17 required under 2100?

18 MEMBER ZAIDAIN: No, I -- no, I mean to me
19 that's not an issue. This isn't an open parking space
20 we're talking about. This is a driveway. And I don't
21 see -- to me, the way I read that, there's no
22 connection between driveway and all open parking
23 spaces. It doesn't say driveways to all open parking
24 spaces. It just says driveway.

25 CHAIRPERSON GRIFFIS: But if you look at

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1 it from the beginning of 2117, and follow it all the
2 way through, it's talking about access to required
3 parking spaces. So 2117.3, all required spaces shall
4 be clearly striped, lined according to dimensions.

5 MEMBER ZAIDAIN: Right, that means --

6 CHAIRPERSON GRIFFIS: 2117.4, each
7 required parking space shall be accessible at all
8 times directly from improved streets and alleys.

9 MEMBER ZAIDAIN: True. Yeah, and this
10 isn't a required parking space that we're talking
11 about.

12 CHAIRPERSON GRIFFIS: 2117.8 indicates a
13 driveway that provides access to required parking
14 spaces shall meet the following standards.

15 MEMBER ZAIDAIN: Right and I don't think
16 that provision applies. That -- you're going through
17 where I was at last night. And it's very clear
18 through these regulations how a lot of these are tied
19 to required parking spaces. But I don't read 2117.10
20 that way.

21 MEMBER ETHERLY: I mean I'm almost
22 inclined perhaps to agree with Mr. Chair in that if
23 you look at 2118.9 with the inclusion -- which tries
24 to give some shape to the inclusion of that word all,
25 because 2117.10 has all open parking spaces, including

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1 access aisles, driveways, does 2117.10 address both
2 required and non-required parking?

3 If anything, the word open is troubling in
4 that --

5 CHAIRPERSON GRIFFIS: Yes --

6 MEMBER ZAIDAIN: Yes, it is but to me that
7 doesn't apply.

8 CHAIRPERSON GRIFFIS: -- opening parking
9 spaces because it's the access aisles, driveways, and
10 ramp areas that are attendant to open parking spaces.

11 MEMBER ZAIDAIN: No, and I just -- I don't
12 read that way. To me it's listed --

13 CHAIRPERSON GRIFFIS: It's all open
14 parking spaces including access aisles, driveways, and
15 ramp areas shall be -- it means if you're looking at
16 open parking spaces, even that access, driveways, and
17 ramps to those have to be surfaced. And that's what's
18 covered under 2017.10.

19 It's not -- look, we're talking about all
20 open parking spaces -- and we're talking about access
21 aisles, driveways, ramps, independently of this
22 definition of open parking spaces.

23 MEMBER ZAIDAIN: So the way you interpret
24 that section is that access aisles, driveways, and
25 ramp areas that are only connected to or serving open

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1 parking spaces have to meet that requirement but
2 driveways in general do not?

3 CHAIRPERSON GRIFFIS: That's the way I
4 read 2117.10.

5 MEMBER ZAIDAIN: Okay.

6 CHAIRPERSON GRIFFIS: Otherwise, why are
7 we being so specific in 2117.8 that driveways for
8 required parking spaces go through a myriad of things
9 --

10 MEMBER ZAIDAIN: Well --

11 CHAIRPERSON GRIFFIS: -- 2117.9 also
12 dealing with road dwellings, specifically the type of
13 structure and the access driveways to it. And then we
14 go to 2117.10 that says this all open parking spaces.

15 MEMBER ZAIDAIN: All right. Well, it
16 seemed to me in trying to figure out the regulations
17 is there's certain requirements that are for required
18 spaces and that there's a certain level that you have
19 to meet. If you're -- you know, you have to provide
20 one space that meets XY criteria.

21 And then there's other regulations
22 starting -- possibly starting at 2117.10 that are
23 dealing with the ones that are not required. And in
24 this instance from your interpretations, specifically
25 open.

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1 CHAIRPERSON GRIFFIS: But it seems to me
2 that that may be even talking about a higher density
3 of parking as in an open parking. Does corporation
4 counsel have an understanding of what open parking
5 spaces are in terms of --

6 MEMBER ZAIDAIN: Well, that's not the
7 point. I mean I know what open parking spaces are.
8 I mean I think the issue --

9 CHAIRPERSON GRIFFIS: We're not --

10 MEMBER ZAIDAIN: -- here is access.

11 CHAIRPERSON GRIFFIS: I don't know.

12 MEMBER ZAIDAIN: Parking space, in my
13 mind, if we were debating open parking spaces, I would
14 say non-required parking spaces that are not enclosed.
15 That's not what we're dealing with here.

16 CHAIRPERSON GRIFFIS: But why would they
17 need to be screened from residential properties?

18 MEMBER ZAIDAIN: But -- but -- I don't --
19 the question is -- and I think this is the better
20 question for corp counsel is do you read 2710 as
21 talking about access to all open parking spaces,
22 access aisles, driveways, and ramp areas?

23 PARTICIPANT: In my view, the word open
24 would preclude application in this instance to a space
25 that's inside of a garage.

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1 CHAIRPERSON GRIFFIS: Inside of a parking
2 structure?

3 PARTICIPANT: Parking structure -- I'm not
4 sure if it's a garage -- I'm --

5 MEMBER ZAIDAIN: Right, which this is
6 clearly not --

7 PARTICIPANT: -- not sure.

8 CHAIRPERSON GRIFFIS: Right.

9 PARTICIPANT: So that wouldn't be open --

10 MEMBER ZAIDAIN: That's --

11 PARTICIPANT: -- therefore the section
12 wouldn't be applicable.

13 MEMBER ZAIDAIN: We're kind of debating
14 the wrong --

15 CHAIRPERSON GRIFFIS: No, we're not.

16 MEMBER ZAIDAIN: Well, okay, actually her
17 last answer clarified it.

18 CHAIRPERSON GRIFFIS: If 2017.10 --

19 MEMBER ZAIDAIN: Okay, okay.

20 CHAIRPERSON GRIFFIS: -- is talking about
21 -- I just want to be clear, Mr. Zaidain, because I am
22 not 100 percent clear --

23 MEMBER ZAIDAIN: Okay.

24 CHAIRPERSON GRIFFIS: -- and I want to
25 understand what you're saying and you understand what

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1 I say. 2117.10, if all open parking spaces -- if open
2 parking spaces is, as corporation counsel has just
3 indicated, may well be talking about parking
4 structures, That parking space in an open structure

5 MEMBER ZAIDAIN: Yes.

6 CHAIRPERSON GRIFFIS: -- which is, you
7 know, could -- that's a high intensity use. It seems
8 to support the continued reading that interpretation
9 because if you go to 2117.12, open parking places
10 shall be screened from all contiguous residential
11 property located in all the residential districts, it
12 seems to be saying look, we have this high intensity
13 parking garage and we have to screen it if it's atten
14 -- or adjacent to any residential area.

15 MEMBER ZAIDAIN: You mean high intensity
16 parking lot, not garage. You just said garage.

17 CHAIRPERSON GRIFFIS: Well, garage, lot,
18 whatever.

19 MEMBER ZAIDAIN: Well, that's the
20 difference between open. I mean in my mind, and it's
21 clearly not worded clearly, if it were to read the way
22 you've -- the way you're suggesting it would say
23 access aisles, driveways, and ramp areas which serve
24 all open parking spaces shall be paved et cetera, et
25 cetera.

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1 I mean it's definitely open for
2 interpretation. And like I said, in preparing for
3 this, you know, I think the regulations are unclear --
4 are clear in delineating between required parking and
5 non-required parking.

6 I just had a hard time sifting through
7 that one regulation. And I was hoping to have some
8 lively debate on it, which it seems like we've
9 started.

10 CHAIRPERSON GRIFFIS: You got what you
11 wished for.
12 Others?

13 VICE CHAIRPERSON MILLER: I looked at this
14 from a different angle. Basically the issues are one,
15 whether all driveways are required to be impervious
16 under the regulations or whether only driveways to
17 required parking spaces are required to be impervious.
18 And then we take it from there.

19 And I concur with Mr. Parsons' view that
20 to me looking at the regulations, it appears that all
21 driveways are required to be impervious because of the
22 definition of impervious surface coverage --
23 impervious surface, sorry, in 199.1, that includes
24 driveway in the definition of impervious surface.

25 Then with respect to whether the parking

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spaces required in this case -- I looked at the structure here, which is a two-story structure that is only allowed in an R-1-A district because it qualifies as an accessory private garage with a second story for sleeping and living quarters of domestic employee of the family occupying the main building.

And the only reason it's allowed to be there is because it is a garage with domestic quarters up above. And if you look at the definition of garage in 199, that says that it's used for parking of one or more motor vehicles. So to me that reads that it requires to have a parking spot in the garage.

And then that takes me to 2117.4 which says because a parking space is required, access to parking space is required with a surface that is impervious pursuant to that regulation.

CHAIRPERSON GRIFFIS: To address that, and I think that's very clearly stated, but to argue the other side for lively debate, 2117.4 goes to those required spaces under the chapter of -- under the tabulation of zoning required count.

So it seems to me here that there is a big difference between zoning required count of spaces and one being required here and a structure that must provide space for parking. If a garage must provide

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1 space for parking, it does not mean that that goes to
2 the required parking. You can provide it somewhere
3 else.

4 If you do provide it somewhere else, as is
5 being stated in this case, then that required space,
6 the count required space, must come under the
7 regulations and then would -- that space would come
8 under 2117.4.

9 MR. PARSONS: Mr. Chairman --

10 CHAIRPERSON GRIFFIS: Yes?

11 MR. PARSONS: -- can I intrude on that?

12 I don't understand where the word space comes from.
13 The definition says used for the parking of one or
14 more motor vehicles. It doesn't say provide space for
15 one or more.

16 CHAIRPERSON GRIFFIS: Well, it would go --
17 it would go to this logical piece. Yes, it is going
18 to use meaning you need to design this thing.

19 It doesn't tell you you have to come under
20 the code-required dimensions of a parking space but it
21 means it has to be built and designed so that you
22 could pull a car in there. You could use it as
23 parking.

24 For instance, in my mind, the way I think
25 about this -- and maybe this will help -- and I could

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1 be incorrect -- but we have residential zones that
2 have garages, accessory garages in back, right?

3 And we've had cases where people come in
4 and they say, you know, parking is a big problem and
5 all that. And we've asked do you park in your garage?
6 And they say, oh gosh, no. It's all storage. It's
7 bicycles, it's boxes. Is that actually non-conforming
8 with zoning regulations if they fill it up with
9 storage or use it differently?

10 Or is it compliant with the zoning
11 regulations based on the fact that it could park a car
12 there?

13 MR. PARSONS: Well, I -- I -- that's a
14 larger debate but --

15 CHAIRPERSON GRIFFIS: Well, it isn't
16 because --

17 MR. PARSONS: -- the words --

18 CHAIRPERSON GRIFFIS: -- the definition --

19 MR. PARSONS: -- our definition --

20 CHAIRPERSON GRIFFIS: -- goes to use.

21 MR. PARSONS: -- says it's used for the
22 parking of one or more motor vehicles. Not that it's
23 used for parking of bicycles. I mean it's pretty
24 clear just -- you know --

25 CHAIRPERSON GRIFFIS: So it's required to

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1 be used for parking.

2 MR. PARSONS: We'll give you a ticket book
3 and send you out into the streets.

4 CHAIRPERSON GRIFFIS: I'd gladly enforce
5 all of those.

6 MR. PARSONS: But that's what it says and
7 whether the practice is to not use it for that, that's
8 a much larger issue but the design of this and the
9 regulations say it should be used for parking one or
10 more motor vehicles.

11 And the logic tells you you got to get
12 there somehow. And that's probably a driveway.

13 CHAIRPERSON GRIFFIS: Okay.

14 MEMBER ZAIDAIN: Well, just -- just to
15 chime in because I'm -- well I'm sure we'll get
16 debating this for a little bit but I have to side with
17 the Chair on this point. The way the regulations are
18 structured and the way I read them are that you have
19 a certain parking threshold that you have to meet.

20 And once you meet that, the regulations
21 are different for the parking spaces you provide.
22 Once you provide -- for a single-family home, you're
23 required to have one space. It has to meet X, Y, and
24 Z criteria, dimensions, whatever. And once you
25 provide that, beyond that the restrictions are

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1 different.

2 And that's the -- that's the way I view
3 this parking garage is -- is that it's providing a
4 space that's not required so the specific dimensional
5 requirements don't apply.

6 And I think -- say -- I think if somebody
7 provides the minimum threshold of parking and then ?-
8 and then they go to build a parking garage, I think to
9 say well, if you're going to build a parking garage,
10 then it has to be screened, it has to be 9 x 19 within
11 the structure, I think that's kind of reading the
12 regulations beyond -- beyond what they say and beyond
13 their intent.

14 So that's where I am on the issue.

15 VICE CHAIRPERSON MILLER: Well, Mr.
16 Chairman, my concern here is looking at this in the
17 context of the tree and slope overlay and the intent
18 of the regulation in general, which allows as an
19 exception a two-story structure which normally
20 wouldn't be allowed but for the fact that it is a
21 garage plus a domestic quarters.

22 And if you take away the requirement that
23 the garage has to house a motor vehicle and then have
24 access to it, then it could be a pool house or
25 whatever you want -- whatever you want to use it for.

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1 And -- and -- and that's my concern here is that this
2 -- part of what this case is about is that allowing an
3 exception here because it is a garage.

4 CHAIRPERSON GRIFFIS: Very well. Others?

5 MEMBER ZAIDAIN: Well, well, I -- you
6 know, the tree and slope overlay keeps being brought
7 up. And I guess I, you know, I mean that's obviously
8 something that we need to keep in mind here. But in
9 terms of this issue, I don't -- I don't understand how
10 that -- that plays in.

11 I don't have the specific dimensional
12 requirements for the garage in front of me. But I --
13 I kind of -- from recalling the testimony, I mean if
14 we were to say that this -- this garage has to meet
15 all the parking requirements, would it have to be a
16 bigger structure then?

17 And how would that play into the tree and
18 slope overlay? I mean does it already accommodate a
19 9 by 19 space? And would we ask them to -- to enlarge
20 the structure?

21 I mean I'm trying -- I mean when it comes
22 to impervious surface, okay, I understand the general
23 contextual issue with the overlay. But when it comes
24 to this building, I don't -- I don't -- I don't see
25 it.

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1 VICE CHAIRPERSON MILLER: Well, I'm not
2 really going to the --

3 PARTICIPANT: We --

4 VICE CHAIRPERSON MILLER: -- oh, I'm
5 sorry. PARTICIPANT: Go ahead.

6 VICE CHAIRPERSON MILLER: I'm not going to
7 the dimensions of the building. I'm just saying
8 because it's a garage, it's required to have an
9 impervious driveway by its definition.

10 MR. PARSONS: That's the whole issue here.

11 MEMBER ZAIDAIN: Okay, that's the issue.

12 MR. PARSONS: It has nothing to do with
13 required spaces. If you're going to call it a garage,
14 it looks like a garage, it should be used like a
15 garage, then it has to have access and access should
16 be pervious.

17 MEMBER ZAIDAIN: Well, but I think we need
18 to keep in mind --

19 MR. PARSONS: Impervious, excuse me.

20 MEMBER ZAIDAIN: -- where this debate
21 would lead if we were to say that the space inside
22 that building is a required parking space. It's
23 beyond a driveway. It would be a dimensional
24 requirement for the space inside of it. And I don't
25 know, I mean does --

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1 MR. PARSONS: This has nothing to do with
2 required space.

3 MEMBER ZAIDAIN: That's, to me, that's the
4 debate.

5 MR. PARSONS: They applied for a garage.

6 MEMBER ZAIDAIN: Right.

7 MR. PARSONS: Beyond the required parking
8 spaces. They've got to get access to it.

9 MEMBER ZAIDAIN: Okay.

10 MR. PARSONS: The issue is a driveway is
11 supposed to be pervious.

12 MEMBER ZAIDAIN: Well, I think -- think
13 that's a point --

14 MR. PARSONS: Impervious -- I keep
15 screwing myself up.

16 MEMBER ZAIDAIN: -- and I think -- I think
17 -- I think where Ms. Miller is coming from is much --
18 is much broader, I think. She's trying to say it's a
19 required parking space within that garage. And
20 correct me if I'm wrong.

21 VICE CHAIRPERSON MILLER: I'm saying there
22 are -- there are two points.

23 MEMBER ZAIDAIN: Right.

24 VICE CHAIRPERSON MILLER: You may only
25 agree with one of them.

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1 MEMBER ZAIDAIN: No, but am I correct in
2 that that's one of your points that this -- okay, so
3 that's got a whole broader implication than just a
4 driveway.

5 MR. PARSONS: All right. I agree with her
6 that if you're going to build a garage, by definition
7 you're supposed to use it for parking a car. But when
8 you tangle it up with how many parking spaces are
9 required on this lot in an R-1 zone is where we're
10 straying away. We ought to deal with the structure,
11 which is the issue here.

12 MEMBER ETHERLY: I'm -- I'm still
13 struggling with the two positions. The thing that is
14 a little bit of a hump for me is does the
15 interpretation that Ms. Miller and Mr. Parson offer,
16 does that interpretation in effect eliminate the need
17 for a distinction between required and non-required
18 spaces?

19 Because essentially aren't you saying that
20 if you provide required parking somewhere else on the
21 site, but decide to provide another, you know, another
22 parking option, but you've already satisfied your
23 requirement, aren't you essentially saying if you
24 decide to go that rout, you're essentially in for the
25 full pound?

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1 And therefore have to comply with all of
2 the requirements that adhere to required parking
3 spaces? So hence why really have the distinction
4 between required and non-required?

5 MEMBER ZAIDAIN: That was exactly my
6 point. I think that you just said that that's where
7 you were headed.

8 VICE CHAIRPERSON MILLER: I don't think
9 that's where I'm headed but I was talking about
10 whether it's required. And I thought by definition of
11 garage in this case, it was required.

12 But if the Board is struggling with that,
13 maybe we should deal with the more general issue as to
14 whether all driveways must be impervious, which was
15 Mr. Parsons's point.

16 MEMBER ETHERLY: Well, no, I --

17 VICE CHAIRPERSON MILLER: Am I --

18 MEMBER ETHERLY: -- think -- but I think
19 -- I'm trying to be a little systematic by in order to
20 get to the driveway question, you have to first decide
21 whether or not a driveway is required to get to
22 whatever it is you're getting to.

23 CHAIRPERSON GRIFFIS: That's right.

24 MEMBER ETHERLY: So I think we still have
25 to be at that first point of is there some requirement

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1 for an access route to this thing we're talking about,
2 the accessory garage. And Mr. Parsons' position is
3 clearly yes, it's a garage. And I think Ms. Miller is
4 saying the same thing.

5 It's a garage and a garage requires a
6 driveway. And I think that's kind of question number
7 one. And then question number two is okay, if you
8 decide that it does require a driveway, the issue of
9 the definition of impervious creates a problem because
10 it includes the term driveway in its definition; hence
11 if a driveway is required, then that driveway
12 absolutely has to be impervious if you go by the
13 interpretation that Mr. Parsons and Ms. Miller are
14 arguing.

15 And I have, you know, another issue there
16 but I don't want to muddy it first. I'm still trying
17 to deal with what's required to get you to the
18 accessory garage that we're talking about.

19 VICE CHAIRPERSON MILLER: Just to respond,
20 my authority for getting to a driveway being required
21 for access to a parking space is 2117.4. Because you
22 -- but you have to agree that a parking space is
23 required to get there.

24 CHAIRPERSON GRIFFIS: That's right.

25 VICE CHAIRPERSON MILLER: It says each

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1 required parking space shall be accessible at all
2 times directly from improved streets or alleys or
3 shall be accessible from improved streets and alleys
4 via graded and unobstructed private driveways that
5 form an all-weather impervious surface.

6 MEMBER ZAIDAIN: Well, I think that
7 highlights what we're struggling with because if
8 you're going to say 2117.4 applies, then you have to
9 say that 2117.3 applies which means that all required
10 parking spaces shall be clearly striped and lined
11 according to the dimensions in durable materials et
12 cetera.

13 So that means that the parking space
14 within the garage would have to be -- have to be
15 stripped and lined. I mean that's -- that's -- when
16 you -- the regulations are clear on what applies to
17 required parking and what applies to non-required
18 parking.

19 And I -- and that's where you're hearing
20 these concerns coming from is that if we're going to
21 say this is a required parking space within this
22 garage, which I don't agree with but we were going to
23 say that, then you've got a whole list of things that
24 are going to apply to it, not just the driveway issue.

25 MR. PARSONS: Well, think about that Mr.

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1 Zaidain. How many residential parking pads have you
2 seen that are striped and lined?

3 MEMBER ZAIDAIN: Well, I would say if
4 they're required, then they should be.

5 MR. PARSONS: Oh, come on.

6 MEMBER ZAIDAIN: If it's the one space
7 that's supposed to be on there --

8 MR. PARSONS: This is for commercial --

9 MEMBER ZAIDAIN: -- it's supposed to be on
10 there.

11 MR. PARSONS: -- parking lots, not for
12 residential use.

13 MEMBER ZAIDAIN: I don't see the --

14 MR. PARSONS: It defies logic --

15 MEMBER ZAIDAIN: -- delineation.

16 MR. PARSONS: -- to stripe peoples'
17 parking spaces in residential zones. That's over the
18 edge. So our dilemma is --

19 CHAIRPERSON GRIFFIS: Well, it would be in
20 plural. I mean all required -- well, I don't know.
21 Let's not delve into that too far.

22 I think Mr. -- what Mr. Zaidain's point
23 is, though, if you get to -- if you find that it's
24 required, then it does have to come into compliance
25 with the regulations. I mean 2117.8 seems to be the

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1 operating section.

2 And that reads a driveway that provides
3 access to required parking spaces shall meet the
4 following standards.

5 And it should have a grade of a maximum of
6 12 percent, it should be of seven feet width, and a
7 driveway serving a single-family dwelling. Driveway
8 serving any other use has other standards. And a
9 driveway that provides access directly from the street
10 to the road, dwelling, or flat would have a minimum
11 of, you know, all the other pieces.

12 I mean it seems to go directly to where
13 driveways are actually required. And then the
14 standards of which they have to comply with.

15 As usual, the regulations may defy common
16 sense. And that may well be what we're having
17 difficulty with.

18 MR. PARSONS: Well, in this case, the fact
19 that the regulations presume that if you're going to
20 have a garage, it requires a driveway is not contained
21 in the regulations but defies common practice, common
22 sense, and logic to say well gee, garages don't
23 require driveways, only required spaces require
24 driveways.

25 And that's where I can't -- I can't go.

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1 CHAIRPERSON GRIFFIS: Well, I guess it
2 doesn't seem so far-fetched in my mind when we look at
3 what a driveway is according to the zoning
4 regulations. I don't disagree that access, vehicular
5 access, should be provided.

6 MR. PARSONS: Right.

7 CHAIRPERSON GRIFFIS: I just don't know
8 that it goes to the higher requirements of being a
9 full driveway. For instance -- well, I won't -- go
10 ahead.

11 VICE CHAIRPERSON MILLER: Let's get beyond
12 then those requirements in 2117.4 --

13 CHAIRPERSON GRIFFIS: You're done with
14 those? You want --

15 VICE CHAIRPERSON MILLER: But no, I --

16 CHAIRPERSON GRIFFIS: -- to move on to
17 something that interests you?

18 VICE CHAIRPERSON MILLER: Well, no. Yes,
19 I want to take another angle at this in that the
20 permit approved was for a pervious driveway so then
21 the question is there is a driveway approved on this
22 permit. Can it be approved as pervious? Or was that
23 an error and it can only be impervious?

24 CHAIRPERSON GRIFFIS: So are you raising
25 a question regarding the definition of impervious in

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1 the regs?

2 VICE CHAIRPERSON MILLER: Well, my point
3 now is basically that maybe we're not deciding whether
4 or not a driveway required. But there was a driveway
5 -- there was a driveway indicated on the plat and
6 approved on the permit for a pervious surface.

7 And what was being challenged is whether
8 or not the zoning administrator erred in approving a
9 driveway with a pervious.

10 MEMBER ETHERLY: That is pervious -- which
11 essentially is, as I would understand it, calling into
12 question, or raising an interpretation question on the
13 issue of impervious surface, which, of course, notes
14 in relative part, impervious surfaces include the
15 footprints of principle and accessory buildings,
16 footprints of patios, driveways, other paved areas, et
17 cetera.

18 And I'm still struggling with this
19 definition. And I'll just -- I'll note the reason for
20 my bias here because that definition includes the term
21 tennis court. And being an avid tennis player, one of
22 my most hated and dreadful surfaces is clay which, of
23 course, is a tennis surface that's used in some -- in
24 some good amount here in the District of Columbia.

25 So my virtue of this definition, is that

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1 saying that there can be no such thing, no such tennis
2 court other than an impervious tennis court, i.e.,
3 hard court.

4 VICE CHAIRPERSON MILLER: Well, I'm an
5 avid tennis player also. And I would say that we
6 don't know whether or not these surfaces were, you
7 know, approved via a variance or how they got there or
8 what. But I know that --

9 CHAIRPERSON GRIFFIS: Wow --

10 VICE CHAIRPERSON MILLER: -- the
11 appellants did submit a BZA case in which the National
12 Trust for Historic Preservation was seeking a variance
13 to permit a brownstone surface instead of an all-
14 weather impervious surface. So --

15 CHAIRPERSON GRIFFIS: What was that?

16 VICE CHAIRPERSON MILLER: The appellant
17 cited a BZA case --

18 CHAIRPERSON GRIFFIS: Oh, I see.

19 VICE CHAIRPERSON MILLER: -- 1111956,
20 which I pulled, which was brought by the National
21 Trust for Historic Preservation seeing a variance from
22 what was at that point 7206.3 to permit a brownstone
23 surface instead of an all-weather impervious surface
24 that was required.

25 And they didn't -- and the Board didn't

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1 rule on that particular issue. But that is a
2 question, you know, whether or not someone has to seek
3 a variance if they want to have a pervious driveway.

4 CHAIRPERSON GRIFFIS: But was the going to
5 a required parking space?

6 VICE CHAIRPERSON MILLER: It wasn't --
7 it's not -- it wasn't -- that issue was not ruled on.
8 Do you want me to really --

9 CHAIRPERSON GRIFFIS: No, but what's the
10 -- what's the -- what's the fact of the case?

11 VICE CHAIRPERSON MILLER: Well, the -- I
12 think it was for a parking lot.

13 CHAIRPERSON GRIFFIS: So -- and it was
14 going to required count --

15 VICE CHAIRPERSON MILLER: Not if they used
16 the word required in here. Yes, requirements. The
17 regs have changed since then. So --

18 MEMBER ETHERLY: And just --

19 CHAIRPERSON GRIFFIS: But the requirements
20 may not have for that application, am I correct? So
21 we're talking about --

22 VICE CHAIRPERSON MILLER: Maybe it was the
23 requirements with that definition, I really don't
24 know.

25 CHAIRPERSON GRIFFIS: -- but that case

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1 goes to directly how you -- what is -- what is the
2 surface material allowable for access driveway to
3 required parking spaces.

4 MEMBER ETHERLY: And just to further
5 complicate matters, and I know Mr. Parsons wants to
6 get in here --

7 MR. PARSONS: Yes.

8 MEMBER ETHERLY: -- the only reason why I
9 raise the tennis court component of the definition --

10 CHAIRPERSON GRIFFIS: Because that's where
11 this is going, this volley.

12 MEMBER ETHERLY: Yes, it's a volley. But
13 -- well I won't say clearly, but you have instances,
14 of course, where there are other surfaces that form,
15 that can be used to create a tennis court.

16 Does that suggest that the inclusion of
17 the term driveway in the definition of impervious
18 surface is not meant to be read so restrictively such
19 that it means all driveways should be impervious but
20 is rather used simply as an example of a type of -- a
21 type of thing or condition that could be constructed
22 in an impervious way?

23 That's what I'm struggling with because
24 that inclusion of the term tennis court -- I mean I'd
25 almost have to dig back into my history and find out

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1 well when was the first clay tennis court created.
2 But I would hazard a guess that we had grass and other
3 surfaces that are -- I would say universally
4 considered pervious at the time that the zoning regs
5 were developed.

6 So to suggest that the inclusion of
7 driveways means that all driveways -- if it is a
8 driveway, it has to be impervious, that's -- I'm
9 wondering whether or not that's too restrictive a
10 reading.

11 MR. PARSONS: Well, I think that if we'd
12 had a definition of pervious, clay courts wouldn't
13 make the cut. They don't absorb water. And let us
14 not stray off on this until 1:00. Grass courts, I
15 would agree with you. But clay courts don't have that
16 characteristic that would lend themselves to be
17 pervious.

18 They still have runoff. They are still
19 graded in such a way that runoff is coming off the
20 surface.

21 Reading on in this definition of
22 impervious, get to the end of that. And it adds, and
23 any path or walkway that is covered by impervious
24 material. It seems to me at that point, it is
25 suggesting that not all paths or walkways may be

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1 covered with impervious materials.

2 That gets into your context of any
3 example. But it sets paths and walkways aside as I
4 read this. But I still get back to the logic and
5 common sense of a driveway needs to be -- needs to go
6 to a garage. And it's clear to me that driveways
7 traditionally have been required to have an impervious
8 surface. And it's that simple.

9 So --

10 CHAIRPERSON GRIFFIS: Very well.

11 MR. PARSONS: -- rather than debate this
12 for another hour --

13 CHAIRPERSON GRIFFIS: Right. We can move
14 on.

15 MR. PARSONS: -- would you -- what would
16 you like us to do, Mr. Chairman?

17 CHAIRPERSON GRIFFIS: I would like us to
18 come to consensus however not noting that that would
19 probably happen on this. I think we can move on to
20 talk about some of the other additional issues. Or
21 I'm perfectly happy to take a motion at this time.

22 It may be appropriate to break it out as
23 we started our discussion in terms of the motion
24 regarding the appeal of the pool permit.

25 And then the second being the motion

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1 attendant to the revised permit if that is amenable to
2 everybody.

3 In which case, I don't see a lot of motion
4 or objection. Let me take it up first then that I
5 would move -- I'm sorry. I need to get my notes in
6 front of me first. Man, I've got to watch taking cold
7 medicine.

8 I would move denial of the appeal
9 attendant to Building Permit No. B451476 known to the
10 Board as the pool permit, which was issued May 20,
11 2003. And I would ask for a second.

12 MEMBER ETHERLY: Seconded, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Thank you very much.
14 I think the -- most importantly the issues of the pool
15 was the encroachment into the yard -- in the rear
16 yard. I think we've fully deliberated on that. And
17 I believe that the burden to prove that the catchment
18 tank or even the pool structure was not met. And
19 therefore do not support the appeal.

20 Additional comments to deliberation on
21 that?

22 MEMBER ZAIDAIN: That's the only issue to
23 that permit that we reviewed that permit under, right?
24 Was it the catch basin? Just to make sure that I'm
25 clear. The encroachment into the rear yard?

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1 CHAIRPERSON GRIFFIS: Yes.

2 MEMBER ZAIDAIN: Okay.

3 CHAIRPERSON GRIFFIS: I'm sorry, just
4 checking my notes on that also.

5 MEMBER ZAIDAIN: No, that's my
6 understanding as well. I just wanted to --

7 CHAIRPERSON GRIFFIS: Right. That is my
8 understanding. That there was not any other crossover
9 of the issues, which I think was fairly clarified for
10 us during the proceedings.

11 Any other comments on that?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Not noting anything,
14 I would ask that all those in favor signify by saying
15 aye.

16 (Chorus of ayes.)

17 CHAIRPERSON GRIFFIS: And opposed?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Abstaining?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Very well, we've
22 heard the first motion.

23 MR. MOY: The staff would record the vote
24 of the first motion to deny the appeal as to the pool
25 permit issued 2003, motion of the Chair, Mr. Griffis,

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1 seconded by Mr. Etherly. Also in favor of the motion
2 to deny the appeal, Ms. Miller, Mr. Zaidain, and Mr.
3 Parsons.

4 CHAIRPERSON GRIFFIS: You may continue.

5 VICE CHAIRPERSON MILLER: Mr. Chairman,
6 I'd like to make a motion with respect to Building
7 Permit No. B452913, the revised permit of June 13,
8 2003. I would move to grant the appeal of Application
9 No. 17054 of Henry P. Sailor, et. al., with respect to
10 that permit on the grounds that the zoning
11 administrator erred in issuing the June 13, 2003
12 revised permit because the driveway to the garage must
13 be impervious and the driveway reflected on the plat
14 and approved by the zoning administrator is pervious.

15 MR. PARSONS: Second.

16 MEMBER ZAIDAIN: I just want to make sure
17 I'm clear on where you're coming from on the motion
18 for a regulation standpoint just because we've had a
19 lot of debate about tennis courts and everything.

20 The basis for your interpretation is based
21 on the definition of impervious surface, which
22 mentions driveways and tennis courts, et cetera. And
23 then the real heart of the authority comes under 27 --
24 2117.4?

25 VICE CHAIRPERSON MILLER: At this point,

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1 I'm comfortable with going with the definition of
2 impervious surface as explained by Mr. Parsons and
3 leaving the other regulation out.

4 MEMBER ZAIDAIN: So we're -- okay -- so at
5 this point, we're not debating 2117.4. It's strictly
6 on the definition?

7 CHAIRPERSON GRIFFIS: I think we have to
8 debate it.

9 VICE CHAIRPERSON MILLER: Well, this --

10 CHAIRPERSON GRIFFIS: You're saying that
11 2117.4 doesn't factor into your deliberation and
12 understanding of this?

13 VICE CHAIRPERSON MILLER: I'm saying I was
14 promoting both arguments. But I'm comfortable that
15 the definition alone provides for this result.

16 MEMBER ZAIDAIN: I mean I think that --

17 VICE CHAIRPERSON MILLER: They have a
18 driveway on the plat. It was approved. And it is
19 shown to be pervious.

20 CHAIRPERSON GRIFFIS: I see.

21 MEMBER ZAIDAIN: So you're eliminating the
22 argument of the required parking space is what you're
23 doing? You're taking that out? Because that's where
24 2117.4 comes from.

25 VICE CHAIRPERSON MILLER: Right. I don't

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1 think we necessarily have to reach that.

2 CHAIRPERSON GRIFFIS: I see. Well, it's
3 a good clarification Mr. Zaidain has brought you to.
4 And that is the fact that if you call something a
5 driveway, it has to come into compliance with the
6 definition of --

7 MEMBER ZAIDAIN: Impervious.

8 CHAIRPERSON GRIFFIS: -- impervious.

9 VICE CHAIRPERSON MILLER: Yes.

10 CHAIRPERSON GRIFFIS: Interesting. Okay.
11 Further?

12 MR. PARSONS: Only to remind the Board
13 before they vote that we're -- where we are. We're in
14 a tree and slope overlay.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. PARSONS: One of its major purposes is
17 this issue. If we allow or encourage this kind of
18 interpretation of our regulations that says you can do
19 this in a -- any tree and slope overlay, we're
20 encouraging a violation of the intent of that.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. PARSONS: That ordinance.

23 CHAIRPERSON GRIFFIS: I don't think we're
24 that close to calling a vote. But I appreciate that.

25 MR. PARSONS: I hope so.

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1 CHAIRPERSON GRIFFIS: Oh, you hope so?
2 Well we do have other issues that probably ought to be
3 touched upon. But perhaps not. I mean we've talked
4 briefly about the dimensions of the driveway that's
5 existing and whether it meets it.

6 I guess I can take it as consensus that we
7 can rely on the filing by the owner/intervener in that
8 understanding as we haven't had deliberation in that
9 for the other issues in terms of stairways and
10 anything encroaching on side yards.

11 But Mr. Parsons, let me ask in terms of
12 the intent of the overlay, I mean isn't the base
13 intent of the tree and slope overlay to provide a
14 maximum amount of pervious surfaces?

15 MR. PARSONS: Yes, with the understanding
16 that the remainder would remain natural. I mean
17 that's the approach is, you know, occupy 50 percent of
18 this site for your building needs. And the remainder
19 would remain in grass, trees, and steep slope.

20 CHAIRPERSON GRIFFIS: But does that mean
21 --

22 MR. PARSONS: Not a series of terraces
23 that you begin to call pervious to -- impervious to
24 avoid the impervious requirement.

25 CHAIRPERSON GRIFFIS: Okay. And just

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1 remind us again because I know you understand the tree
2 and slope overlay better than I, but in terms of the
3 addition -- the 50 percent that is not occupied in the
4 pervious surface, is it strictly required that it
5 would be of natural --

6 MR. PARSONS: No.

7 CHAIRPERSON GRIFFIS: -- condition?

8 MR. PARSONS: The intent was.

9 CHAIRPERSON GRIFFIS: Okay, the intent.
10 But could you not create sculpted gardens that looked
11 very natural or terraced or anything of that nature
12 which would also come into compliance with the
13 overlay?

14 MR. PARSONS: Not as I read it. I mean --

15 CHAIRPERSON GRIFFIS: I see.

16 MR. PARSONS: -- keep in mind these are
17 steep slopes --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. PARSONS: -- facing parks.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. PARSONS: And the idea was not to
22 build a series of terraces that intruded on that
23 parkscape because of their height.

24 CHAIRPERSON GRIFFIS: I see.

25 MR. PARSONS: I mean exactly what's shown

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1 on the photographs that we have in our record is what
2 it was trying to avoid. By terracing your buildings
3 to fill the topography of the natural slope, you're
4 erecting buildings that are taller as seen from the
5 park below.

6 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

7 VICE CHAIRPERSON MILLER: Just so I'm
8 clear -- I mean -- as to what I'm relying on. And I'm
9 really not just relying on the definition though I
10 agree with Mr. Parsons.

11 I think you have to look at the big
12 picture and 2500.5 is also a provision which allows
13 this two-story building only because it has a garage.
14 And then the garage brings with it all the other
15 attendant features such as access and driveways.

16 And if it's not required to, then it could
17 be anything. And it would undermine, I think, the
18 intent of the regulation.

19 CHAIRPERSON GRIFFIS: But I don't think
20 anyone is refuting or disagreeing with you that if a
21 car is able to park there, access has to be provided.
22 The next step in the threshold is does it have to be
23 the requirements for those accesses that are laid out
24 for required parking spaces?

25 VICE CHAIRPERSON MILLER: I'm not ready to

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1 say it has to be all those requirements but a driveway
2 is access. And driveways are required to be
3 impervious the way I read the definition. I'm not
4 ready to say that it has to be striped.

5 CHAIRPERSON GRIFFIS: But how can you take
6 one out and leave in others?

7 MR. PARSONS: Because it's done every day.
8 Nobody stripes residential --

9 CHAIRPERSON GRIFFIS: Yes, but --

10 MR. PARSONS: -- parking spaces.

11 CHAIRPERSON GRIFFIS: -- people put wood
12 chips down on a pervious surface and drive across it.
13 I mean you -- I can't have a discussion about well
14 what's practiced. And so we have to follow certain
15 areas where we can give examples.

16 I mean I could -- why not on my five acres
17 in Upper Northwest, which I wish I owned, I could
18 easily spread some wood chips down and drive my
19 tractor and my cars and my sports cars all over it.
20 It is essentially being used as a driveway. But does
21 that make it have to be an impervious surface?

22 MR. PARSONS: Only when it accesses a
23 garage in my estimation. And I went to Webster's to
24 find out what a driveway was. And it says exactly
25 that -- that it's going to a building or buildings.

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1 CHAIRPERSON GRIFFIS: Right, right.

2 MR. PARSONS: Connecting it to the street.

3 CHAIRPERSON GRIFFIS: Okay.

4 MEMBER ZAIDAIN: Mr. Chair, I mean --

5 CHAIRPERSON GRIFFIS: Yes?

6 MEMBER ZAIDAIN: -- it seems like I was
7 the one that kind of walked Ms. Miller down that line.
8 I mean I think -- I think actually her clarification
9 on the argument is helpful.

10 We don't -- I mean we no longer have to
11 debate whether or not the space in the garage is a
12 required parking space anymore. It's more focused on
13 the driveway. And whether or not that should be an
14 impervious surface.

15 I mean I think that's the bottom line
16 issue and from what I'm hearing -- on that debate what
17 I'm hearing is that that's coming from her reading of
18 the definition and Mr. Parsons reading of -- are
19 coming from Webster, which we're required to look at.

20 And I don't see any other authority to
21 deal with in that sense. But I mean we've turned
22 about the tree and slope overlay. But I mean I don't
23 think the tree and slope overlay would encourage
24 somebody to provide an impervious driveway.

25 I mean I think that's a good contextual

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1 thing that we need to think about. But there's
2 nothing in the tree and slope overlay that says all
3 driveways on this site must be impervious.

4 CHAIRPERSON GRIFFIS: Right. So you are
5 aware?

6 MR. PARSONS: I don't understand what you
7 just said.

8 CHAIRPERSON GRIFFIS: And that's an even
9 more direct way.

10 MR. PARSONS: I mean we're using 199.1.
11 We're not groping into the other regulation to see if
12 there should be pervious or impervious driveways.

13 MEMBER ZAIDAIN: Right. That's coming
14 from the definition. I mean I'm just trying to
15 understand your argument regarding the tree and slope
16 overlay. And where the authority in the tree and
17 slope overlay comes from, I think. I don't think it's
18 there. And I think you just clarified that. It comes
19 from the definitional aspect.

20 MEMBER ETHERLY: Unless you look at it
21 this way because, Mr. Zaidain, you could be sniffing
22 around what perhaps I'm struggling with on that
23 definition piece. Let's say that definition piece is
24 -- while not a dead end, but let's just say that
25 there's room for interpretation for the sake of

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1 argument.

2 What I am perhaps still sorting out, and
3 Mr. Parsons started to go there, is ensuring that
4 however you read it, perhaps you err on the side of
5 reading it in such a way, in this instance at least,
6 that it is -- that you're still furthering and
7 supporting the objectives of the tree and slope
8 overlay.

9 And perhaps coming back to Mr. Zaidain's
10 question, help me once again understand where the
11 reading of there being such a thing as pervious
12 driveways doing injustice or harm to the tree and
13 slope overlay.

14 I think you began to lay it out by talking
15 about because in turn in what you're allowing is this
16 terraced approach that could then be replicated, you
17 know, on any number of other parcels and -- I mean
18 help me -- help me perhaps understand that.

19 MR. PARSONS: Well, more importantly,
20 let's go back to the Chairman's five-acre dreamland.

21 CHAIRPERSON GRIFFIS: Yes, let's please.

22 MR. PARSONS: If -- you could build a
23 house on that --

24 CHAIRPERSON GRIFFIS: Right.

25 MR. PARSONS: -- and theoretically you

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1 could go to the edge of that property, properly set
2 back, and build 20 garages that are two stories so you
3 can have your servants living in them with no access
4 to them, no driveways. And that's certainly not the
5 intent of the tree and slope overlay.

6 Well, I need all these accessory garages
7 all over the place. And I have lots of servants. So
8 I want -- I mean after all, you have five acres, you
9 must have lots of those. And that's the illogic of
10 saying nobody needs a driveway to a garage.

11 We'll call it a garage but you don't need
12 to drive a car to it. You can put wood chips down.
13 And it's wrong. It's illogical. And it's dangerous
14 in a tree and slope overlay.

15 MEMBER ZAIDAIN: But so you're saying that
16 using wood chips as a driveway, having a natural-type
17 of driveway or something like that, would be contrary
18 to the intent of the tree and slope overlay?

19 MR. PARSONS: No, it wouldn't. It's the
20 height of the building. That's what this is about.
21 You call it a garage and you can go two stories,
22 right? So you begin to intrude further onto the
23 adjacent park land.

24 MEMBER ZAIDAIN: Right.

25 MR. PARSONS: And develop a bigger

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1 envelope, in most cases, than the neighborhood that
2 you're building in. And it just is easy for me to
3 understand.

4 MEMBER ZAIDAIN: But under the regs as
5 written, it's not an argument that you can't have the
6 accessory garage. The garage can be there. So the
7 Chairman's mythical dream home on five acres, I mean
8 you can -- I'm confused.

9 CHAIRPERSON GRIFFIS: Very well. We seem
10 to all know where we might be.

11 MR. PARSONS: Except for a couple who have
12 admitted confusion.

13 MEMBER ETHERLY: I wholeheartedly admit
14 confusion and embrace it actively right now.

15 CHAIRPERSON GRIFFIS: Right. We're going
16 stretch our legs for five minutes and we'll be back.

17 (Whereupon, the foregoing
18 matter went off the record at
19 11:49 a.m. and went back on the
20 record at 12:24 p.m.)

21 CHAIRPERSON GRIFFIS: Very well, let's
22 resume. And let's commence our deliberation on the
23 appeal Application 17054. I believe we've aired an
24 awful lot of issues. And where the Board is and how
25 it is separating perhaps on the regulations.

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1 But let me open it up to further comments
2 at this time that may bring some clarity of argument.

3 MEMBER ETHERLY: Mr. Chair, I'll just note
4 as we're all getting prepared to dive into this last
5 part of it at least that I think our discussion today
6 has been very, very good, and very detailed on some
7 very critical issues.

8 And I think my colleagues have done well
9 to point out some of the stress points in this appeal.
10 And I just want to note that for the record that I
11 found the discussion and the debate to be very
12 helpful.

13 CHAIRPERSON GRIFFIS: Good. Let me just
14 remind the Board, of course, that our microphones
15 aren't working that well. So we'll just speak up a
16 little bit so folks in the audience can hear us.

17 I agree with you, Mr. Etherly. I think
18 this has been a productive, if not complex, argument.
19 And it does seem to be revolving and splitting on an
20 issue of utilizing the definition of impervious. And
21 what falls underneath that. And how the land coverage
22 of impervious and pervious should be calculated.

23 The other separate side of the argument
24 goes to whether if one provides parking spaces in
25 structures that cover parking spaces that are not

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1 required but rather are above and beyond that
2 required, what is then the requirement of the other
3 attendant issues to that?

4 And I think that somewhat frames the
5 argument that we've been going through in terms of
6 upholding or denying the appeal.

7 We do have a motion that's before us to
8 uphold the appeal and I think we could have that
9 restated and perhaps clarified briefly if we need to.

10 MEMBER ZAIDAIN: Well, Mr. Chair, I'll
11 jump in. As we've been debating this and struggling,
12 you know, with, you know, all these issues regarding
13 required parking and driveways and whether or not the
14 structure needs access and all of that, I mean it's
15 obviously clear that once again the regulations are
16 just not clear in regards to all of those issues.

17 And I think Ms. Miller and Mr. Parsons
18 have done a great job in pinning us down on what we
19 have to look at. And that is the definition of
20 impervious surface.

21 Now we've had -- we've been debating on
22 what that means. And let me take a step back. The
23 regulations are just not clear on what the material of
24 a driveway should be. I mean that's kind of -- when
25 you get down to the nuts and bolts of it, that's what

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1 we're looking it.

2 And unfortunately, it's just not there as
3 much as we get through it. If there was a definition
4 of driveway, you'd think that would be clarified. But
5 it's not. We have to go to Webster's and that's not
6 really there.

7 So it seems to me the best way to look at
8 this is look at what the definition of impervious
9 surface is. And that is in an area that impedes the
10 percolation of water into the subsoil and impedes
11 plant growth. An impervious surface includes the
12 footprints of principle and accessory buildings,
13 footprints of patios, driveways, other paved areas,
14 tennis court, et cetera.

15 So in looking at that literally, which is
16 where we're at, I don't think there's any other way
17 that we can get around this without looking at that
18 literally.

19 It seems that that definition does not
20 provide clarity on the material of a driveway but it
21 provides a literal clarity on whether or not the
22 driveway should be considered an impervious surface
23 regardless of its material.

24 And working through that, I can't get
25 around that. And that's really where I am. So I'm

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1 going to offer a friendly amendment to Ms. Miller's
2 motion and say that we uphold the appeal based on the
3 fact that the ZA erred in not including a driveway in
4 the calculation of impervious surface. And frankly
5 leave it at that.

6 CHAIRPERSON GRIFFIS: Ms. Miller?

7 VICE CHAIRPERSON MILLER: I accept the
8 amendment.

9 MR. PARSONS: The seconder accepts the
10 amendment.

11 CHAIRPERSON GRIFFIS: Very well. We have
12 a motion before us that has been amended. Do we need
13 it restated? The original motion with the amendment?
14 I you're not --

15 MEMBER ZAIDAIN: Well, I mean -- I mean,
16 you know, I'm never good at wording motions,
17 especially given my cold but --

18 CHAIRPERSON GRIFFIS: Okay. We'll move
19 on.

20 MEMBER ZAIDAIN: But the intent is --

21 CHAIRPERSON GRIFFIS: We'll move on.

22 MEMBER ZAIDAIN: -- to say look,
23 driveways, the literal reading of the definition of an
24 impervious surface leads us to conclude that driveways
25 should be included in the calculation of impervious

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1 surface.

2 The zoning regulations, unfortunately, are
3 unclear and they are silent on what the material of
4 the driveway should be but it seems that the intent is
5 that they should be included, at minimum, in the
6 calculation of impervious surfaces.

7 CHAIRPERSON GRIFFIS: So if one labels a
8 drive -- driveway on a plan, it would be then
9 calculated, if needed to be, by the zoning
10 administrator as impervious.

11 MEMBER ZAIDAIN: That is -- that is the
12 way I read the regulations. I mean you look at
13 impervious coverage, it ties it in with impervious
14 surfaces. What does impervious surfaces mean? You
15 look at the definition of impervious surfaces and then
16 we're back where we started from.

17 So until -- and I hate to pass the buck
18 here but until the Zoning Commission clarifies what --
19 exactly what we're looking for here in the District of
20 Columbia as it regards to material driveways, that's
21 what we have to hang our hat on.

22 MR. PARSONS: I agree. And if you go to
23 the end of that definition, it provides exceptions to
24 that only in paths and walkways. And that is it says
25 that paths and walkways will be calculated as

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1 impervious if they have impervious material upon them.

2 MEMBER ZAIDAIN: Right. I mean --

3 MR. PARSONS: That's the only thing in the
4 definition that has wiggle room as to what its surface
5 should be.

6 MEMBER ZAIDAIN: And in regards to
7 material, that's the only qualifier is, you're right,
8 in terms of path or walkways.

9 MEMBER ETHERLY: What I think Mr.
10 Zaidain's friendly amendment offers is it offers an
11 interpretation that I believe is true to the text
12 while acknowledging that the text is somewhat
13 amorphous.

14 But I think the important piece here is a
15 spirit, there's guidance there in that definition that
16 says we need to ensure that as you look at, regardless
17 of what the material is, if it's a patio, driveway,
18 other paved area of a tennis court, it is the intent
19 of the zoning regs from a definitional standpoint that
20 those items be viewed as impervious surface.

21 I think it offers a very sound approach
22 albeit one that, as Mr. Zaidain noted, would still
23 benefit from a look by the Zoning Commission. But I
24 think it is a rather consistent approach and
25 reasonable and not too tortured.

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1 MEMBER ZAIDAIN: Right and, you know, I
2 mean there is some general, you know, there is some
3 general comments and implications as to the materials
4 of those items but unfortunately you've heard our
5 debate up here and, you know, even five reasonable
6 people can't conclude on what that implication is.

7 So we have to look at the literal
8 interpretation I feel.

9 CHAIRPERSON GRIFFIS: Yes?

10 VICE CHAIRPERSON MILLER: I'd just --
11 I'd like to try to restate the motion so that it's
12 clear what we're voting on.

13 I would move to grant the appeal of
14 Building Permit No. B4521 -- sorry -- B452913, the
15 revised permit of June 13, 2003, on the grounds that
16 the zoning administrator erred in issuing the June 13,
17 2003 revised permit because the driveway to the garage
18 must be treated as impervious -- or as impervious
19 surface.

20 CHAIRPERSON GRIFFIS: Okay. I think that
21 embodies the amendment to the motion.

22 I mean if we are, in fact, putting a
23 laundry list together of what the Zoning Commission
24 needs to look at, I think one of the things that has
25 really kind of torn us apart on this -- and I don't

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1 know that we need additional deliberation on it, but
2 the Zoning Commission may well look further into
3 adding into the regulations where required driveways
4 are -- where driveways are required and where they
5 are, in fact, not.

6 And whether anything to additional parking
7 spaces or garages would, in fact, require driveways.

8 That being said, any other deliberation?

9 MEMBER ZAIDAIN: Well, there was a change
10 in my amendment and the operative word going from
11 calculated to treated. And I don't have a problem
12 with that.

13 CHAIRPERSON GRIFFIS: All right.

14 MEMBER ZAIDAIN: But when we say treated,
15 we're talking about how the ZA views a driveway
16 period.

17 VICE CHAIRPERSON MILLER: That's correct.

18 MEMBER ZAIDAIN: Not treatment in the
19 environmental sense of the term.

20 VICE CHAIRPERSON MILLER: Calculated --
21 you want me to amend it again?

22 MEMBER ZAIDAIN: No, that's fine. It's
23 fine.

24 VICE CHAIRPERSON MILLER: That's the
25 intent of this is to be -- how it's to be calculated

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1 as impervious.

2 CHAIRPERSON GRIFFIS: Right. Okay.

3 Anything further? Any further deliberation?

4 (No response.)

5 CHAIRPERSON GRIFFIS: There is a motion
6 before us -- let me put my last word in. I think that
7 this motion, as it's going with it's amendment, is
8 going towards a very strict reading of the regulations
9 in regarding the definition of impervious.

10 I do not believe that it's in error to
11 read the definition that way and the way that the
12 zoning administrator should have taken something that
13 was so labeled on a drawing. And I think that is
14 actually the limit to which we are deciding this
15 appeal as is very clear.

16 MEMBER ETHERLY: I'll not, Mr. Chair, I
17 think it's an important comment make not to prolong
18 our deliberation but it would be my sense that this
19 is.

20 While I would not characterize it as a
21 liberal reading of the definition, I think it
22 evidences a very -- an effort on the part of this
23 Board to resolve or address a very important
24 observation that my colleague, Mr. Parsons, made.

25 And that is as you look at the intent of

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1 the tree and slope overlay, I think we're looking at
2 this in a way that remains true to the text of the
3 definition as it's laid out in the zoning regs.

4 But obviously we're looking at it in the
5 larger context of the tree and slope overlay and
6 what's happening in actuality on this site.

7 And I think that's a very important point.
8 So I agree with you to a point. But I believe it's
9 important to say that I don't think it's a strict
10 reading. I think it's a rather flexible and open
11 approach.

12 CHAIRPERSON GRIFFIS: Okay. Anything
13 else?

14 (No response.)

15 CHAIRPERSON GRIFFIS: All right. We have
16 a motion before us. It's been seconded. I would ask
17 that the Board members in favor signify by saying aye.

18 (Chorus of ayes.)

19 CHAIRPERSON GRIFFIS: And opposed?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Abstaining?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Thank you all very
24 much. Mr. Moy?

25 MR. MOY: Yes, the staff would record the

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1 vote as 5-0-0 to -- on the motion to grant the appeal
2 as to Permit No. B452913, June 13, 2003, on motion of
3 Ms. Miller, the Vice Chair, second by Mr. Parsons.
4 Also in support of the motion Mr. Etherly, Mr.
5 Zaidain, and Mr. Griffis.

6 CHAIRPERSON GRIFFIS: Very well. Let's
7 move on to the next case. Mr. Parsons, thank you very
8 much.

9 MR. MOY: The next case is Application No.
10 17111 of 2412 Limited Partnership, pursuant to 11 DCMR
11 3103.2 for a variance from the floor area ratio
12 requirements under 402, a variance from the lot
13 occupancy requirements under 403, and a variance
14 from the non-conformance structure provisions under
15 subsection 2001.3 to allow a second-story addition to
16 an apartment house in the R-5-B District at premises
17 2412 17th Street, N.W., Square 2566, Lot 819.

18 On February 10, 2004, the Board completed
19 testimony on the application and scheduled its
20 decision to March 2, 2004.

21 The Board requested the following post-
22 hearing submissions. One, to readdress the -- from
23 the applicant to readdress the uniqueness and
24 practical difficulty of the requested variances in
25 findings of fact and conclusions of law. And that was

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1 submitted and is in your case folders under Exhibit
2 42.

3 And that completes my briefing, Mr.
4 Chairman.

5 CHAIRPERSON GRIFFIS: Thank you very much,
6 Mr. Moy. Board members, I know we're very familiar
7 with this. And we did have this laid out one
8 additional filing in this and that was I was hoping to
9 have a summation of all of the elements of the
10 argument that were presented during the public
11 hearing.

12 As it wasn't the absolute -- well, it
13 didn't come to what I was actually looking for in
14 terms of the last piece. But I think all of the
15 information is there within the case. And I think
16 it's appropriate to move ahead with the under a
17 motion. And I will outline a substantial amount of
18 the argument.

19 But I would move approval of Application
20 17111 of 2412 Limited Partnership. And that is the
21 variance from the floor area ration of which I will --
22 well, which is enumerated in the application, the lot
23 occupancy, and also the variance from the non-
24 conforming structure provision of 2001.3.

25 This does allow, of course, the two-story

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1 addition to the apartment house at 2412 17th Street,
2 N.W. And I'd ask for a second.

3 VICE CHAIRPERSON MILLER: Second.

4 CHAIRPERSON GRIFFIS: Thank you very much.

5 Let me outline, first of all, of course
6 the Office of Planning did put in a very comprehensive
7 memo report on this. They were supporting two of the
8 aspects of the variance and not the third.

9 They did not support the variance for the
10 floor area ratio as they had an argument that was --
11 that went to the fact that they thought it was --
12 well, I'll summarize it. It was a little bit too
13 much.

14 Additionally, we had submissions from the
15 ANC -- ANC-1C, which was recommending approval. It is
16 Exhibit No. 26. And we had a substantial amount of
17 support, one coming from the Reed-Cooke Neighborhood
18 Association, which is Exhibit No. 28.

19 All those went to, I think an important
20 aspect of the uniqueness of this, and that is the
21 current condition of the building. First of all, in
22 terms of the lot occupancy, it is what it is.

23 And they were filling in, which would
24 create an additional -- actually it wasn't creating
25 additional lot occupancy calculation because they were

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1 non-conforming courts that would have gone to the lot
2 occupancy, conforming those, bringing it up to first
3 of all code standard requirements.

4 There was certainly no objection to taking
5 the boards off the building and redoing it. However,
6 that doesn't necessarily bring it about the threshold
7 for a variance test but rather noting that additional
8 -- the original construction may not have had
9 foundations appropriate for the longevity of the
10 structure itself.

11 As we well note, in numerous occasions we
12 were told that the building is sinking. In order to
13 accommodate even just the reuse of the existing
14 structure, one would have to do a substantial amount
15 of work.

16 We had asked for kind of an overview of
17 what the cost implications are. The importance of the
18 cost implications is, as I think we all understand, is
19 that based on the condition that's created -- based on
20 the uniqueness, which is essentially a lot of the
21 condition of the building, we have the practical
22 difficulty of making it actually usable and
23 occupiable.

24 And so the cost of the work, we're looking
25 to the kind of the base building costs that were

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1 attendant to that type of work, you know, underpinning
2 in order to put a proper structure to it.

3 How much was given whether you added or
4 not? I think it was substantially stated that the
5 fact of the matter is the amount of investment to do
6 this was not viable to maintain it as a two-story
7 structure.

8 The other aspect in terms of the FAR, and
9 I think the case is fairly strong in terms of the
10 uniqueness and practical difficulty. Let's go to the
11 third -- well, the third prong in terms of the public
12 good, but also whether it would impair the integrity
13 of the zone plan map.

14 I think in terms of the FAR, one would
15 naturally look at the fact of my goodness, we're
16 going, perhaps, well beyond what would become
17 reasonable for an FAR of a new construction of a
18 building in this zone.

19 However, I think you'll recall there was
20 some testimony and discussion during the public
21 hearing of the fact of well what is the FAR actually
22 regulating. And FAR regulates several things. But
23 building mass is one. And the impact of the building
24 mass.

25 Well, in this particular case, the

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1 building mass is a given. The lot occupancy isn't
2 going to change. It's being built within the matter
3 of right height. So we're not going beyond the
4 envelope there.

5 So the FAR is really now regulating for
6 this particular case the density or intensity of use.
7 It's fairly clear that we have similar -- and even a
8 -- we have similar unit counts, which go directly to
9 the intensity of use.

10 And so I think the FAR here in this
11 particular case, the increase that is or the relief
12 from the required, would not impair the intent and
13 integrity of the zone plan and map because I don't
14 think that it actually is ending up regulating what
15 would be an impairment.

16 I think it is somewhat of a secondary
17 outcome of bringing this to a matter of right height
18 with a given lot occupancy or rather an existing lot
19 occupancy.

20 I think attendant to that also, which I
21 probably have just brushed over very quickly but
22 attendant to that is creating one code complaint.

23 And, of course, we do have the addition of
24 egress stairs, too, which have to be enclosed which is
25 a definitely and I don't remember specifically that

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1 the dimensions of the existing stair was given. But
2 I would imagine the new stair will have to be larger,
3 if not substantially larger.

4 There is a certain amount of space that's
5 carved out of this building. What's left over if
6 additional stories are not created within the height
7 limit I think would not begin to offset the economics
8 of doing a project at this height in the existing
9 building.

10 That being said, let me let others speak
11 to any other issues that they have.

12 Mr. Zaidain?

13 MEMBER ZAIDAIN: Very briefly because I
14 think I'm losing my voice.

15 I agree with most everything you said.
16 I'm not comfortable -- well, I don't necessarily agree
17 with the FAR issue. I'm not -- I don't think it's to
18 an extent that would request -- well, that would not
19 -- that would take away my support of this project.

20 You know there's been some concern about
21 other projects on the block. And how this FAR may
22 translate -- or this FAR variance or request would
23 translate to other projects on the block. And that
24 caused me some issues as well.

25 And as I was preparing for this, it seems

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1 like if I just focused on that and this economic
2 argument, the FRA, or FAR, excuse me, variance fails.

3 However, I think looking at the site
4 constraints and the confluence of factors coming from
5 the other requested variances, filling in the courts,
6 et cetera, and how that ties into lot occupancy, I
7 think gives me some level of comfort to approve the
8 project, especially given that it's in -- it's a reuse
9 of an existing building, albeit they're adding
10 construction on top.

11 But I did want to say that I agree with a
12 lot of what OP was referring to in regards to
13 jeopardizing the intent of the zone in that area. And
14 in preparing for this, I kept that in mind.

15 However, I do think there's enough in the
16 site-specific characteristics of this project that
17 lend me to support it. However, I want to allay some
18 of their fears and maybe some of the concerns of
19 anybody in the community that this is going to open
20 the door to a flood of variances up and down the block
21 for projects of a greater FAR than the zone district
22 allows.

23 I don't see that and I think if this
24 project came in strictly -- and I think this actually
25 -- I think this was reflected in the original hearing

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1 and why, you know, we had to have a small session on
2 it in executive session, because if this came in as
3 just a straight economic argument, and, you know, and
4 just tied the FAR variance to that in trying to make
5 this a viable project, I think we'd have -- there
6 would be a legitimate problem.

7 And we've heard varying testimonies of
8 what's going on on that block, other projects
9 surrounding it, how the neighborhood is. I think the
10 applicant provided a statement that was a snapshot in
11 time of the economics of this project.

12 I'm not -- I think there would be a
13 considerable debate on the future of this neighborhood
14 and what's going to happen. And I think it becomes
15 nebulous. And I think at the end of the day, it would
16 be hard to meet the variance test.

17 Fortunately, there was enough site-
18 specific characteristics, the fact that, you know,
19 some problems with the existing structure as well as
20 the restraints of the size of the lot, that I think
21 lend enough weight for me to support the project.

22 Thank you.

23 VICE CHAIRPERSON MILLER: I want to note
24 -- I don't -- I'm not sure that you this, Mr. Chairman,
25 but that this -- that their answers were approved

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1 previously by BZA order in 1993, particularly with
2 respect to the FAR. A greater FAR was allowed in that
3 case of up to 3.62. And here it's 2.97.

4 And I recognize that the zoning was
5 different but it was approved up to that point.

6 I was not swayed by OP's argument on the
7 FAR. I found it very general, very unspecific, very,
8 you know, it's just too much. And when I pressed them
9 for why, they couldn't -- I didn't think they
10 articulated a sufficient reason for me.

11 Particularly when looking at this in the
12 big picture, I think it's in accordance with the
13 comprehensive plan and land use element that
14 encourages retention and expansion of residential uses
15 in mixed use neighborhoods.

16 I was convinced that they couldn't do --
17 make this building feasible without expanding the FAR.
18 And the neighborhood would be left with a vacant
19 building that its had for all these years.

20 So I think with respect to the test of no
21 substantial detriment to the public good, it certainly
22 increased affordable housing, turned a long-vacant
23 building into new housing, increases the vitality on
24 the block.

25 I think we heard testimony about improving

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1 public safety with respect to adding more people,
2 vitality, balconies which put eyes and ears on the
3 street.

4 I also want to note that this application
5 has the support of Council Member Jim Graham. And we
6 also had a petition signed by neighborhood residents.
7 And it had the support of the Adams Morgan Business
8 and Professional Association.

9 So all in all, to me this looked like a --
10 this looks like a very good project, which dealt with
11 an extremely difficult situation in that it wouldn't
12 have been economically feasible without the variances.

13 CHAIRPERSON GRIFFIS: Well said.

14 MEMBER ZAIDAIN: Just to reiterate my
15 position --

16 CHAIRPERSON GRIFFIS: Okay.

17 MEMBER ZAIDAIN: -- it's kind of an
18 interesting follow up to my discussion. I think Ms.
19 Miller and I are getting to the same point, just
20 taking very different routes to get there.

21 I just want to make sure that that's
22 reflected in our decision. Because I did -- I do
23 think -- I mean I don't want to get in debate about it
24 because I think, like I said, I think we support the
25 project. Just we have different reasons for

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1 supporting it.

2 But I do think OP was taking in the
3 broader view. And I think that was important. And
4 just the economic aspect of it didn't sell me the
5 project.

6 And I just want to make sure that was
7 clear on the record.

8 CHAIRPERSON GRIFFIS: Okay, understood.

9 VICE CHAIRPERSON MILLER: I also would
10 like to note that it was also influential to me that
11 this building is still within the 50-foot matter of
12 right height. And it's also adjacent to other
13 industrial buildings.

14 CHAIRPERSON GRIFFIS: Okay. Anything
15 further?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Very well. I think
18 it's -- clearly, we have differing reasons of
19 deliberations. I think it's important to note those.

20 I think the Board fundamentally agree to
21 the fact of the existing structure is the basis for
22 its uniqueness and practical difficulty for specific
23 reasons.

24 That being said, if there's nothing
25 further on that, I'd ask for all those in favor of the

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1 motion to signify by saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: And opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Abstaining?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well.

8 MR. MOY: Staff would record the vote as
9 4-0-1 on the motion of Mr. Griffis to approve,
10 seconded by Ms. Miller. Also in favor of the motion
11 Mr. Zaidain and Mr. Etherly. And we have one Zoning
12 Commission member not participating.

13 CHAIRPERSON GRIFFIS: Thank you. And I
14 think we can issue a summary order on that.

15 MEMBER ZAIDAIN: Yes, please.

16 MR. MOY: The next decision case before
17 the Board is Application No. 16144 of Parkside
18 Townhouses, formerly known as the Trust for Public
19 Land, pursuant to 11 DCMR 3108.01 and 3107.2 for
20 special exceptions under 353 to allow new
21 residential development, a special exception under
22 410 to allow a group of one-family dwelling to be
23 erected and deemed a single building, and a special
24 exception under 209 to establish a community center
25 building.

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1 And a number of variances, one to allow
2 the front entrances of more than four one-family
3 dwellings to face the street that abuts the lot, from
4 the floor area ratio, from the rear yard requirements,
5 from off-street parking requirements, for the
6 subdivision and construction of 88 row dwellings, 44
7 semi-detached dwellings, and a community center
8 building in an R-5-A district for land known as
9 Parkside Phase II, Parcels 1, 2, 5, and 7 in the area
10 of Anacostia Avenue, Foote Street, Hayes Street,
11 Kenilworth Avenue, Barnes Street, and Parkside Place,
12 N.E.

13 On -- this -- what is before the Board is
14 a motion for dismissal pursuant to subsection 3113.11.
15 As background, on July 10, 1996, the Board approved
16 the special exceptions for the construction of Phase
17 II of the proposed townhouses. The applicant also
18 requested deferment of payment of the filing fee,
19 which was granted by the Board.

20 On February 22, 2001, ten months later,
21 the Office of Zoning mailed a letter to the applicant
22 requesting the status of the filing fee payment. The
23 Office of Zoning has not received any correspondence
24 or communication from the applicant.

25 The Office of Planning mailed a final

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1 letter to the applicant on August 6, 2002, stating
2 that the Office of Zoning would recommend to the Board
3 that it dismiss the application for failure to comply
4 with the procedural requirements of Title 11 of the
5 zoning regulations.

6 CHAIRPERSON GRIFFIS: Good. Thank you
7 very much, Mr. Moy.

8 Board members, I think that's very well
9 laid out. And I would move dismissal of this
10 application for failure to comply with the procedural
11 requirements of the zoning regulations under
12 subsection 3113.11.

13 And that is for the reasons following:
14 substantial passage time has taken place, lack of
15 follow up by the applicant, and the non-payment of the
16 application fee.

17 And I would ask for a second.

18 VICE CHAIRPERSON MILLER: Second.

19 CHAIRPERSON GRIFFIS: Thank you very much.
20 Any further -- any deliberation?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Discussion? I think
23 Mr. Moy's clearly laid out the time line and the
24 number of time that the Office of Zoning has tried to
25 contact and bring this back to us.

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1 That being said, I'd ask for all those in
2 favor of the motion to signify by saying aye.

3 (Chorus of ayes.)

4 CHAIRPERSON GRIFFIS: And opposed?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Abstaining?

7 (No response.)

8 MR. MOY: Staff would record the vote on
9 the motion of the Chairman, Mr. Griffis, to dismiss,
10 second by Ms. Miller, 4-0-0. Also in favor of the
11 motion, Mr. Zaidain and Mr. Etherly.

12 The last case for decision is Application
13 No. 16486 of Tosha Walker, pursuant to 11 DCMR 3107.2
14 for variances from 2001.3A and C to allow an
15 addition to a non-conforming structure, 401.3 from
16 the minimum lot size, and 404.1 from the rear yard
17 setback requirements for proposed addition and
18 conversion of an existing private garage to a single-
19 family dwelling located in an R-4 district at premises
20 439 15th Street, S.E., Square 1062, Lot 804.

21 And again, this is also a motion for
22 dismissal.

23 The Board, very quickly, the Board
24 conducted testimony on the application on September
25 29, 1999. At that time, the Board requested that the

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1 applicant readdress the burden of proof for the relief
2 being requested.

3 On January 14, 2000, the Office of Zoning
4 sent the applicant a letter advising that the case
5 would be dismissed unless there was a response by
6 January 31, 2000.

7 Because the applicant did not response,
8 the Office of Zoning sent a second letter to the
9 applicant inquiring about the applicant's intentions
10 to proceed with the application.

11 On April 29, 2002, the applicant responded
12 by letter stating that it was their intent to proceed
13 with the application but was needing the time to seek
14 legal representation.

15 After six months as elapsed, the Office of
16 Zoning mailed a letter to the applicant on October 25,
17 2002, advising that if the requested information was
18 not received by December 1, 2002, that the Office of
19 Zoning would recommend to the Board that they dismiss
20 the application.

21 That completes the briefing of the staff,
22 Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Thank you very much,
24 Mr. Moy. That's very clear in laying out the history
25 of this and clearly what the Office of Zoning has

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1 done.

2 And it seems to be very clear that we
3 haven't heard from the applicant in over a year, if
4 not more.

5 Therefore, I would move dismissal of the
6 application for failure to comply with the procedural
7 requirements of 3113.11 for not -- well for the
8 substantial amount of passage of time, inactivity on
9 this application, also the lack of follow up by the
10 applicant, and further for not providing the material
11 requested by the Board. And ask for a second.

12 VICE CHAIRPERSON MILLER: Second.

13 CHAIRPERSON GRIFFIS: Thank you very much.
14 Any deliberation on the motion?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Motion before us for
17 the dismissal of the application and ask for all in
18 favor to signify by saying aye.

19 (Chorus of ayes.)

20 CHAIRPERSON GRIFFIS: And opposed?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Any abstaining?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Very well.

25 MR. MOY: The staff would record the vote

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1 as 4-0-1 on the motion to dismiss, second by Ms.
2 Miller. Also in favor of the motion, Mr. Zaidain and
3 Mr. Etherly.

4 CHAIRPERSON GRIFFIS: Anything else for
5 our morning session Mr. Moy?

6 MR. MOY: Well, I'd just like to -- just
7 a slight correction on the earlier case, Parkside
8 Townhouses, the vote should have been 4-0-1 because we
9 had a Zoning Commission member not participating.

10 CHAIRPERSON GRIFFIS: Oh, indeed.

11 MR. MOY: That's all.

12 CHAIRPERSON GRIFFIS: Okay. I'll follow
13 you. Nothing else then in the morning?

14 MR. MOY: No, sir.

15 CHAIRPERSON GRIFFIS: Very well. Just --
16 I think we'll pick up the approval of the minutes by
17 the Board after our afternoon session.

18 For those coming into the hearing room at
19 this point, it is close to 1:00 of which we usually
20 start our afternoon session. I am now about to
21 adjourn our morning session. We're going to take 45
22 minutes for lunch. We will be back by 1:45 to begin
23 our afternoon hearing.

24 (Whereupon, the above-entitled matter
25 concluded at 12:59 p.m.)

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